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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 CONOR JAMES HARRIS,

8 Petitioner,

9 v.

10 BRIAN WILLIAMS,

11 Respondent.  
12

Case No.: 2:19-cv-01180-KJD-EJY

**ORDER**

13 In compliance with this court's order of August 16, 2019, Conor James Harris, a Nevada  
14 prisoner, has paid the filing fee for his petition for a writ of habeas corpus pursuant to 28 U.S.C.  
15 § 2254. ECF Nos. 3/8.

16 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts  
17 (Habeas Rules) requires the court to make a preliminary review of each petition for writ of  
18 habeas corpus. The court must summarily dismiss a petition "[i]f it plainly appears from the  
19 petition and any attached exhibits that the petitioner is not entitled to relief in the district  
20 court...." Habeas Rule 4; *O'Bremski v. Maass*, 915 F.2d 418, 420 (9<sup>th</sup> Cir. 1990); *see also*  
21 *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9<sup>th</sup> Cir. 1990). Habeas Rule 2(c) requires that a  
22 petition 1) specify all grounds of relief available to the petitioner; 2) state the facts supporting  
23 each ground; and 3) state the relief requested. Notice pleading is not sufficient; rather, the

1 petition must state facts that point to a real possibility of constitutional error. Rule 4, Advisory  
2 Committee Notes, 1976 Adoption; *O'Bremski v. Maass*, 915 F.2d at 420 (quoting *Blackledge v.*  
3 *Allison*, 431 U.S. 63, 75 n. 7 (1977)). Allegations in a petition that are vague, conclusory,  
4 patently frivolous or false, or palpably incredible are subject to summary dismissal. *Hendricks v.*  
5 *Vasquez*, 908 F.2d at 491.

6 In Ground One of his petition, Harris claims a constitutional violation arising from the  
7 state court's dismissal of his state collateral proceedings based on laches or untimeliness. ECF  
8 No. 6; p. 3, 15-17. This claim fails because "federal habeas relief is not available to redress  
9 alleged procedural errors in state post-conviction proceedings." *Ortiz v. Stewart*, 149 F.3d 923,  
10 939 (9<sup>th</sup> Cir. 1998). *See also Gerlaugh v. Stewart*, 129 F.3d 1027, 1045 (9<sup>th</sup> Cir. 1997) (errors  
11 allegedly occurring during state post-conviction proceedings are not cognizable in a federal  
12 habeas action); *Franzen v. Brinkman*, 877 F.2d 26, 26 (9<sup>th</sup> Cir. 1989) ("A [habeas corpus]  
13 petition alleging errors in the state post-conviction review process is not addressable through  
14 habeas corpus proceedings.").

15 In Ground Two, Harris alleges that "[a]ll state and federal laws regarding juvenile  
16 sentencing policies and procedures that do not include 18 year-old offenders are contrary to the  
17 very facts material to justify said laws, and [thus] are unconstitutional in their application."  
18 Harris is serving two consecutive life sentences without possibility of a parole for a murder he  
19 committed with a deadly weapon when he was 18 years old. *Id.*, p. 10-11, 13. Though inartfully-  
20 drafted, Ground Two appears to be alleging a claim under *Miller v. Alabama*, 567 U.S. 460  
21 (2012).

22 In *Miller*, "the Court held that a juvenile convicted of a homicide offense could not be  
23 sentenced to life in prison without parole absent consideration of the juvenile's special

1 circumstances in light of the principles and purposes of juvenile sentencing.” *Montgomery v.*  
2 *Louisiana*, 136 S. Ct. 718, 725 (2016). Accordingly, the Court in *Miller* held “that mandatory life  
3 without parole for those under the age of 18 at the time of their crimes violates the Eighth  
4 Amendment's prohibition on ‘cruel and unusual punishments.’” *Miller*, 567 U.S. at 465. The  
5 Court in *Montgomery* held that *Miller*’s prohibition on mandatory life without parole for juvenile  
6 offenders announced a new substantive rule that, under the Constitution, is retroactive in cases  
7 on state collateral review. *Montgomery*, 136 S.Ct. at 736.

8         The U.S. District Court for the District of Connecticut, in a case Harris cites, recently  
9 rejected an argument “that *Miller* drew a bright line at 18 years old, which prevents this court  
10 from applying the rule in *Miller* to an 18-year-old.” *Cruz v. United States*, 2018 WL 1541898, at  
11 \*15 (D. Conn. Mar. 29, 2018). The court determined “that *Miller* applies to 18-year-olds and  
12 thus that ‘the Eighth Amendment forbids a sentencing scheme that mandates life in prison  
13 without possibility of parole’ for offenders who were 18 years old at the time of their crimes.” *Id.*  
14 at \*25 (quoting *Miller*, 567 U.S. at 479). In addition, there is case law supporting an argument  
15 that *Miller* is not confined to instances in which the life without possibility of parole sentence  
16 was imposed under a mandatory penalty scheme. *See, e.g., Malvo v. Mathena*, 893 F.3d 265, 274  
17 (4<sup>th</sup> Cir. 2018), *cert. granted*, 139 S. Ct. 1317 (2019). Thus, this court is not convinced, at this  
18 point, that *Miller* relief is not available to Harris merely because the sentencing court retained  
19 discretion to impose a sentence less than life without possibility of parole.

1 This court reserves judgment as to merits of Harris's *Miller* claim.<sup>1</sup> He has, however,  
2 alleged facts that point to a real possibility of constitutional error. Accordingly, his petition is not  
3 subject to summary dismissal and merits service upon the respondents.

4 In addition, the court will grant Harris's motion for appointment of counsel. "Indigent  
5 state prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the  
6 circumstances of a particular case indicate that appointed counsel is necessary to prevent due  
7 process violations." *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v.*  
8 *Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam). The court may, however, appoint counsel  
9 at any stage of the proceedings "if the interests of justice so require." *See* 18 U.S.C. § 3006A; *see*  
10 *also* Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. The issues discussed  
11 above implicate relatively complex legal analysis, and it appears that Harris may not be able to  
12 adequately litigate those issues without counsel. Therefore, the court finds that appointment of  
13 counsel is in the interests of justice.

14 **IT IS THEREFORE ORDERED** that the Clerk of Court shall add Aaron D. Ford,  
15 Attorney General of the State of Nevada, as counsel for respondents.

16 **IT IS FURTHER ORDERED** that the Clerk shall electronically serve upon respondents  
17 a copy of the petition for writ of habeas corpus, and a copy of this order.

18 **IT IS FURTHER ORDERED** that respondents shall have 20 days from the date on  
19 which the petition is served upon them to appear in this action. Respondents will not be required  
20 to respond to the habeas petition at this time.

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23 <sup>1</sup> The court also notes that there is some question as to whether the claim has been procedurally  
defaulted due to Harris's failure to timely present it to the Nevada courts. ECF No. 6, p. 15-17.  
*See Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

1       **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF  
2 No. 2) is GRANTED. The Federal Public Defender for the District of Nevada (FPD) is appointed  
3 to represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict of  
4 interest or other reason, then alternate counsel will be appointed. In either case, counsel will  
5 represent the petitioner in all federal-court proceedings relating to this matter, unless allowed to  
6 withdraw.

7       **IT IS FURTHER ORDERED** that the Clerk shall electronically serve upon the FPD a  
8 copy of this order, together with a copy of the petition for writ of habeas corpus.

9       **IT IS FURTHER ORDERED** that the FPD shall have 20 days from the date of entry of  
10 this order to file a notice of appearance, or to indicate to the court its inability to represent the  
11 petitioner in this case.

12       **IT IS FURTHER ORDERED** that the court will establish a schedule for further  
13 proceedings after counsel appear for the petitioner and the respondents.

14       Dated: October 15, 2019



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UNITED STATES DISTRICT JUDGE